United Nations S/2010/478

Security Council

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Letter dated 13 September 2010 from the Permanent Observer of the African Union to the United Nations addressed to the President of the Security Council

On behalf of the Commission of the African Union, I have the honour to transmit herewith Assembly Decision AU/Dec.296(XV) (see annex) adopted at the fifteenth Ordinary Session of the Assembly of Heads of State of the African Union (AU), held on 27 July 2010, in Kampala, on the progress report of the second ministerial meeting on the Rome Statute of the International Criminal Court (ICC). I wish in particular to draw your attention to paragraphs 4, 5, 6 and 7 of this decision (see annex).

I wish to underscore the point that millions of children, women and men on our continent have been victims of unimaginable atrocities that shock the conscience of humanity. Without doubt therefore, there is need to combat impunity and promote democracy, the rule of law and good governance throughout the continent, as enunciated in the Constitutive Act of the African Union, which characterizes such crimes as unacceptable to AU member States, and as a sufficient legal basis for intervention by the Union in a member State, without the consent of the concerned State.

The AU Peace and Security Council (PSC) and the Assembly of the African Union have consistently noted with regret that the indictment of President Omar Hassan El Bashir of the Sudan for alleged crimes came at a critical juncture in the process to promote lasting peace, reconciliation and democratic governance in the Sudan. In making the request for the Security Council to make use of its powers under article 16 of the Rome Statute to defer the proceedings against him, the AU is in no way condoning impunity. There is no doubt, as stressed by the Assembly and the PSC in the Decision, and on a number of occasions, that, in order to achieve lasting peace and reconciliation in Darfur, it is imperative to uphold the principles of accountability and bring to justice the perpetrators of gross human rights violations in that region. At the same time, the African Union continues to underscore that it is equally important to ensure that the search for justice is pursued in a way that does not impede or jeopardize efforts aimed at promoting lasting peace.

Furthermore, as you are aware, the processes under way in the Sudan are too critical to the future of the country and the stability of the region and the continent as a whole to be allowed to fail. The AU has thus developed a holistic approach to the situation in the Sudan, which is shared by the United Nations and many of its

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partners, and continues to underscore the primary responsibility of the Security Council for international peace and security. I therefore wish to express the appreciation of the African Union for the positive consideration of this Decision of the African Union, and the concrete steps that the Security Council would take, under your able leadership, towards addressing this matter.

I should be grateful if the present letter and its annex were circulated as a document of the Security Council.

(*Signed*) Tete **Antonio**
Permanent Observer

Annex to the letter dated 13 September 2010 from the Permanent Observer of the African Union to the United Nations addressed to the President of the Security Council

[Original: English and French]

DECISION ON THE PROGRESS REPORT OF THE COMMISSION ON THE IMPLEMENTATION OF DECISION ASSEMBLY/AU/DEC.270(XIV) ON THE SECOND MINISTERIAL MEETING ON THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT (ICC)

Doc. Assembly/AU/10(XV)

The Assembly,

1. **TAKES NOTE** of the Progress Report of the Commission on the Implementation of Decision Assembly/AU/Dec.270(XIV) adopted by the Fourteenth Ordinary Session of the Assembly held in Addis Ababa, Ethiopia, on the Second Ministerial Meeting on the Rome Statute of the International Criminal Court (ICC) and all comments and observations made by Member States and **ENDORSES** the recommendations contained therein;

2. **REITERATES** its commitment to fight impunity in conformity with the provisions of Article 4 (h) of the Constitutive Act of the African Union;

3. **RECALLS** the African Union (AU) position expressed through the Decision Assembly/AU/Dec.270(XIV);

4. **EXPRESSES** its disappointment that the United Nations Security Council (UNSC) has not acted upon the request by the African Union to defer the proceedings initiated against President Omar Hassan El-Bashir of the Republic of the Sudan in accordance with Article 16 of the Rome Statute of ICC which allows the UNSC to defer cases for one (1) year and **REITERATES** its request in this regard;

5. **REITERATES** its Decision that AU Member States shall not cooperate with the ICC in the arrest and surrender of President El-Bashir of the Sudan;

6. **REQUESTS** Member States to balance, where applicable, their obligations to the AU with their obligations to the ICC;

7. **URGES** all Member States to speak with one voice to ensure that the proposed amendment to Article 16 of the Rome Statute which would allow the United Nations General Assembly to take over the power of the UNSC to defer cases for one (1) year in cases where the UNSC has failed to take a decision within a specified time frame is adopted;

Adopted by the Fifteenth Ordinary Session of the Assembly of the Union on 27 July 2010 in Kampala, Uganda

8. **DECIDES** to reject for now, the request by ICC to open a Liaison Office to the AU in Addis Ababa, Ethiopia and **REQUESTS** the Commission to inform the ICC accordingly;

9. **EXPRESSES CONCERN** over the conduct of the ICC prosecutor, Mr. Morano Ocampo who has been making egregiously unacceptable, rude and condescending statements on the case of President Omar Hassan El-Bashir of the Sudan and other situations in Africa;

10. **REQUESTS** the Commission to report regularly on the implementation of this decision.

Adopted by the Fifteenth Ordinary Session of the Assembly of the Union on 27 July 2010 in Kampala, Uganda